

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



July 23, 2004

Agenda ID #3753
Ratesetting

TO: PARTIES OF RECORD IN INVESTIGATION 02-04-026

This is the draft decision of Administrative Law Judge (ALJ) Cooke. It will not appear on the Commission's agenda for at least 25 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

This is an Intervenor Compensation matter. Pursuant to Rule 77.7(f)(6), comments on the draft decision are not required; however, we are circulating the decision for comments which must be filed within 15 days of its mailing. Reply comments must be filed within 24 days of its mailing. Comments must be filed and served on August 9, 2004. Reply comments are due on August 16, 2004.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Cooke at mlc@cpuc.ca.gov. Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:jva

Attachment

Decision **DRAFT DECISION OF ALJ COOKE** (Mailed 7/23/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan for Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM.

Investigation 02-04-026
(Filed April 22, 2002)

**OPINION GRANTING INTERVENOR COMPENSATION
TO AGLET CONSUMER ALLIANCE, CALIFORNIA HYDROPOWER
REFORM COALITION, CONSUMERS UNION OF U.S., INC.,
GREENLINING INSTITUTE, AND THE UTILITY REFORM NETWORK
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 03-12-035**

Table of Contents

Title	Pages
OPINION GRANTING INTERVENOR COMPENSATION TO AGLET CONSUMER ALLIANCE, CALIFORNIA HYDROPOWER REFORM COALITION, CONSUMERS UNION OF U.S., INC., GREENLINING INSTITUTE, AND THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 03-12-035	3
1. Background.....	3
2. Requirements for Awards of Compensation.....	4
3. Procedural Issues	5
3.1 Aglet	6
3.2 CHRC	6
3.3 CU	6
3.4 Greenlining.....	7
3.5 TURN	7
4. Substantial Contribution	8
4.1 Aglet	10
4.2 CHRC	13
4.3 CU	16
4.4 Greenlining.....	18
4.5 TURN	20
5. Reasonableness of Requested Compensation	23
5.1 Aglet	24
5.2 CHRC	27
5.3 CU	36
5.4 Greenlining.....	39
5.5 TURN	49
6. Award.....	58
6.1 Aglet	58
6.2 CHRC	58
6.3 CU	60
6.4 Greenlining.....	60
6.5 TURN	61
7. Waiver of Comment Period	63
8. Assignment of Proceeding	63
Findings of Fact	63
Conclusion of Law	64
ORDER	64

**OPINION GRANTING INTERVENOR COMPENSATION
TO AGLET CONSUMER ALLIANCE, CALIFORNIA HYDROPOWER
REFORM COALITION, CONSUMERS UNION OF U.S., INC.,
GREENLINING INSTITUTE, AND THE UTILITY REFORM NETWORK
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 03-12-035**

This decision awards compensation for substantial contributions to Decision (D.) 03-12-035 to the following intervenors:

Aglet Consumer Alliance (Aglet)	\$127,147.34
California Hydropower Reform Coalition (CHRC)	\$255,971.28
Consumers Union of U.S., Inc. (CU)	\$ 33,465.40
Greenlining Institute (Greenlining)	\$ 96,577.01
The Utility Reform Network (TURN)	\$866,884.22

1. Background

As part of the fallout of the energy crisis of 2000-2001, on April 6, 2001, Pacific Gas and Electric Company (PG&E) filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California. On June 19, 2003, some two years into the bankruptcy litigation and related litigation in other federal courts and at the Commission, PG&E, PG&E Corporation and Commission staff entered into a Proposed Settlement Agreement (PSA). The Commission held eight days of hearing on the PSA in September and October, followed by a full round of briefing, and on December 18, 2003, oral argument. On December 18, 2003, in D.03-12-035, we approved and adopted a Modified Settlement Agreement (MSA). Like the PSA, the MSA provides a plan for the resolution of PG&E's financial difficulties and its emergence from bankruptcy as a creditworthy utility, but it contains terms more favorable to ratepayers.

Aglet, CHRC, CU, Greenlining and TURN all participated in the review that preceded issuance of D.03-12-035 and now claim compensation for substantial contribution to it. After issuance of D.03-12-035 and at the time these intervenor compensation requests were filed, this proceeding remained open for consideration of applications for rehearing and for a decision adopting a rate design to implement the MSA, among other things.¹

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC) (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

¹ The Commission issued D.04-02-062 on rate design issues on February 26, 2004.

3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contentions or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).) As relevant to today’s decision, an intervenor who has made a “substantial contribution” may also, in certain circumstances, receive a compensation award for fees and costs incurred in “obtaining judicial review.” (§ 1802(a); see *Southern California Edison Co. v. PUC* (April 19, 2004, B166993), 2004 Cal. App. LEXIS 568, affirming D.02-06-070 and D.03-04-034.)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

3. Procedural Issues

The Commission opened this proceeding on April 22, 2002, within days of PG&E’s bankruptcy filing, and asked for comments, which were due May 10 and May 22, 2002. No PHC was held; the Order Instituting Investigation (OII) provided that those filing comments would become parties to the proceeding. An Assigned Commissioner’s Scoping Memo issued June 17, 2002. The initial proceedings at the Commission focused on public review of the bankruptcy plan proposal the Commission had put forward as its preferred alternative to PG&E’s plan of reorganization. The proceedings included one day of hearing and on

April 2, 2003, oral argument. No decision issued, however, as the pending, judicially supervised settlement conference in the bankruptcy court resulted in the PSA, publicly announced in June 2003. The Commission refocused this proceeding, issued a PHC notice on June 24, held the PHC on July 9, and issued another Scoping Memo on July 14, 2003. Hearings and oral argument followed, as related more fully in Section 1 of today's decision. D.03-12-035 mailed to the service list on December 19, 2003, the day after its adoption.

3.1. Aglet

Aglet filed its timely NOI on August 6, 2003. On August 20, 2003, Administrative Law Judge (ALJ) Robert Barnett issued a ruling that found Aglet to be a customer under the Public Utilities Code and that Aglet met the significant financial hardship condition. Aglet filed its request for compensation on February 10, 2004, within 60 days of the issuance of D.03-12-035, as required. No party opposes the request. Aglet has satisfied all the procedural requirements necessary to make its request for compensation.

3.2. CHRC

CHRC filed its timely NOI on August 8, 2003. On August 26, 2003, ALJ Barnett issued a ruling that found CHRC to be a customer under the Public Utilities Code and that CHRC met the significant financial hardship condition. CHRC filed its request for compensation on February 17, 2004, within 60 days of the issuance of D.03-12-035, as required. No party opposes the request. CHRC has satisfied all the procedural requirements necessary to make its request for compensation.

3.3. CU

CU filed its timely NOI on August 8, 2003. On August 26, 2003, ALJ Barnett issued a ruling that found CU to be a customer under the Public

Utilities Code and that CU met the significant financial hardship condition. CU filed its request for compensation on February 27, 2004, after receiving an extension of time from ALJ Michelle Cooke. No party opposes the request. CU has satisfied all the procedural requirements necessary to make its request for compensation.

3.4. Greenlining

Greenlining filed its timely NOI on July 16, 2003. On July 23, 2003, ALJ Barnett issued a ruling that found Greenlining to be a customer under the Public Utilities Code and that Greenlining met the significant financial hardship condition. On August 7, 2003 Greenlining filed a motion for preapproval of a finding of substantial contribution and for preapproval of an estimated litigation budget. ALJ Barnet denied the motion on August 20, 2003, consistent with the resolution of TURN's earlier motion (see below). Greenlining filed its request for compensation on February 17, 2004, within 60 days of the issuance of D.03-12-035, as required. No party opposes the request. Greenlining has satisfied all the procedural requirements necessary to make its request for compensation.

3.5. TURN

TURN filed its timely NOI on August 12, 2002. On September 6, 2002, ALJ Burton W. Mattson issued a ruling that found TURN to be a customer under the Public Utilities Code and that TURN met the significant financial hardship condition. Thereafter, on July 14, 2003, TURN filed a supplemental NOI together with a motion for preapproval of a finding of substantial contribution and for preapproval of an estimated litigation budget. Commissioner Michael R. Peevey's July 23, 2003 Assigned Commissioner's Ruling provided guidance regarding TURN's proposed budget but denied the request for preapproval.

TURN filed its request for compensation on February 17, 2004, within 60 days of the issuance of D.03-12-035, as required. No party opposes the request. TURN has satisfied all the procedural requirements necessary to make its request for compensation.

4. Substantial Contribution

As we commence examination of these compensation requests, we note D.03-12-035's acknowledgement that our review of the PSA followed upon "a background of unprecedented developments, and our careful consideration of their related consequences is of utmost importance to the ratepayers of PG&E and the citizens of California." (D.03-12-035, *slip op.*, p. 2.)

We also note D.03-12-035's acknowledgement of the contribution participants made during this proceeding as the Commission assessed the PSA for compliance with our policy goals. D.03-12-035 states:

In reaching our decision, we are informed by a complete record developed by the efforts of a number of parties during eight days of hearing in this proceeding. These parties directed their showings to the overall issue to whether the PSA is fair, just and reasonable, and in the public interest. In assessing our presentations, we pay particular attention to the following goals that have been at the heart of our opposition to PG&E's plan of reorganization:

1. Does the PSA result in PG&E abandoning its effort to evade adherence to state laws and our jurisdiction?
2. Does the PSA resolve energy crisis-related litigation between PG&E and the CPUC?
3. Does the PSA result in lower rates for PG&E's ratepayers?
4. Does the PSA result in PG&E's creditors being paid in full? (*Id.*, p. 8.)

Elsewhere, D.03-12-035 states, “... it is clear that ratepayers have been adequately represented by, among others, ORA, TURN, Aglet, and CCSF [City and County of San Francisco]. We find that the Commission and ratepayers had adequate representation in the settlement process.” (*Id.*, p. 51; see also Conclusion of Law 12.)

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(h).) Second, if the customer’s contentions or recommendations paralleled those of another party, did the customer’s participation materially supplement, complement, or contribute to the presentation of the other party that assisted the Commission in making its decision? (See §§1802(h) and 1802.5.) As described in §1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer’s presentation substantially assisted the Commission.²

Even where the Commission does not adopt any of the customer’s recommendations, compensation may be awarded if, in the judgment of the Commission, the customer’s participation substantially contributed to the

decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.³

The ultimate question before us now is whether the contributions of Aglet, CHRC, CU, Greenlining and TURN warrant intervenor compensation awards in the amount of their respective requests. These total more than \$1.6 million, the largest amount ever requested in a proceeding at the time they were filed. We begin, as the statute requires, by determining whether the intervenors, individually, made substantial contributions to D.03-12-035.

4.1. Aglet

After reviewing other parties' opening comments on the OII, Aglet filed reply comments on May 21, 2002, and thereby became a party of record. Until July 2003, however, Aglet appears to have merely monitored the proceeding (Aglet's time records report only one other, prior activity, in January 2003, when its principal, James Weil (Weil) reviewed testimony).

Beginning in July 2003, Aglet participated actively: it conducted discovery; engaged a consultant to perform necessary financial projections; served testimony and extensive workpapers; participated in hearings; and filed briefs and comments.

² D.98-04-059, 79 CPUC2d, 628 at 653.

³ See D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

Aglet represents residential and small commercial customers and accordingly focused on the PSA's effect on those customers. Aglet states that its showing complemented or contributed to the showings of other parties with similar constituencies and taking similar positions. Aglet points out, for example, that while a number of parties opposed the \$2.21 billion regulatory asset included in the PSA, most of them proposed different ideas for raising the cash to enable PG&E to emerge from bankruptcy. Aglet's effort included testimony on the financing and ratemaking consequences of other U.S. utility bankruptcies, the adequacy of ratepayer representation in the negotiations that led to the PSA, and Aglet's recommendation that PG&E issue new common stock to raise money to pay its creditors.

As Aglet admits, the Commission did not adopt Aglet's recommendations. However, in unusual circumstances, the Commission may benefit from an intervenor's participation even where the Commission did not adopt any of the intervenor's positions or recommendations. Aglet discusses the ways its participation aided the Commission. Aglet points to D.03-12-035's determination that "ratepayers have been adequately represented by, among others, ORA, TURN, Aglet and CCSF." (D03-12-035, *slip op.* at 51.) Such a determination is an important part of the Commission's review of a proposed settlement, which, among other criteria, must be shown to be in the public interest. Aglet was one of only two parties (TURN was the other) to test PG&E's financial projections and credit ratio calculations and to provide projections of its own. Aglet's efforts gave the Commission important information regarding the financial consequences of the PSA and alternative outcomes. Like the other intervenors seeking compensation in this proceeding, Aglet's first objective was to convince the Commission that the PSA did not provide sufficient savings to PG&E's

ratepayers. This objective was accomplished, in a fundamental way, when multiple alternate decisions issued that would have approved the PSA only with significant modifications. We recognize that PG&E's agreement to be bound by the MSA, which is less favorable to it than the PSA, came about only in the face of concerted opposition to the PSA by Aglet and others.

Considering the unique circumstances of this proceeding, the complexity of the issues, and the importance to ratepayers, we conclude that Aglet made a substantial contribution to D.03-12-035 through its participation during the July-December 2003 timeframe. We do not consider that Aglet's nominal participation prior to July 2003 was necessary to its subsequent participation. Accordingly, we find that the pre-July activities did not substantially contribute to D.03-12-035.

Aglet also requests compensation for work in 2004 reviewing rate design issues, including PG&E's Advice Letter 2460. This work occurred after D.03-12-035 issued, and at the time Aglet filed its request, no Commission orders had issued on these matters. While Aglet's work may be characterized as relating to the subject matter of D.03-12-025 or implementation of that decision, it cannot be characterized as having assisted us in the making of that decision, which § 1802(h) requires. Furthermore, Aglet's filing does not make clear whether these hours and expenses are the only ones it intends to claim for its work on post-D.03-12-025 implementation issues. If Aglet were to make an additional request on those issues, we would face the prospect of deciding compensation on a piecemeal basis. We prefer to review Aglet's claimed contributions post-D.03-12-035 in a single request for specific later decisions. We deny this portion of Aglet's request without prejudice; Aglet may refile the request at an appropriate time, consistent with this decision.

4.2. CHRC

CHRC, a conservation organization, opposed divestiture of PG&E's hydropower system, which includes some 140,000 acres of watershed lands. With reference to D.03-12-035's summary of the three, overarching problems with the proposed plan of reorganization that PG&E filed in the bankruptcy court, CHRC claims that it contributed to the resolution of the first and second – loss of regulatory control over divested watershed lands and the potential environmental consequences.⁴ CHRC cleanly segregates its compensation request between the expenses related to its bankruptcy court participation and the expenses related to its participation in this proceeding. We examine these in reverse order.

Beginning in June 2003, CHRC participated in the Commission's review of the PSA before ALJ Barnett. CHRC's activities included preparation of testimony for hearing. Subsequently, at the ALJ's direction, CHRC and other parties engaged in discussions aimed at settlement of differing views about the adequacy of the Land Conservation Commitment (LCC) attached to the PSA. The LCC establishes an agreement to develop and implement a plan to preserve and enhance the beneficial public uses of PG&E's watershed lands. CHRC took a

⁴ D.03-12-035 states:

PG&E's proposed plan of reorganization was expansive in the extreme, and threatened its ratepayers in three ways. First, it would have disaggregated the utility and would have divested this Commission of authority over significant aspects of PG&E's operations. Secondly, it had potentially disastrous environmental consequences. Finally, it locked in, for twelve years, power purchase costs that would have resulted in high retail rates, and then would have left PG&E's power purchase costs to the

Footnote continued on next page

lead in the drafting and negotiation of the Stipulation that modifies the LCC. The Stipulation, which D.03-12-035 approves and makes an enforceable condition of the MSA, resolves all disputed issues of law and fact related to the LCC. Its signatories include 21 entities in addition to CHRC, among them the California Resources Agency, the U.S. Department of Agriculture- Forest Service, and the U.S Department of the Interior- Bureau of Land Management. Notably, the Stipulation includes all of CHRC's recommendations. We conclude that CHRC made a substantial contribution to D.03-12-035 on the issues it raised in this proceeding.

During the period from the fall of 2001 through mid-2003, at the bankruptcy court, the federal district court and the Ninth Circuit, CHRC litigated its concerns that divestiture would result in adverse environmental impacts on the lands and waters within PG&E's hydropower system. CHRC's hydrology expert was the source of the primary evidence on these issues. CHRC also participated in the bankruptcy court proceedings in December 2003, after D.03-12-035 issued, which resulted in that court's Confirmation Order.

CHRC argues that its participation in these federal courts directly contributed to the MSA. CHRC points out that these courts had concurrent jurisdiction with the Commission over the issues of fact and law that the MSA resolves, and that by the MSA's own terms, the Confirmation Order was a precondition to the effectiveness of the MSA.

CHRC's efforts undisputedly helped to shape the courts' examination of the ramifications of PG&E's proposed hydropower divestiture, including the

markets that were largely responsible for PG&E's financial predicament in the first place. (D.03-12-035, *slip op.*, p. 5.)

resulting environmental consequences. We are aware, for example, that CHRC coordinated its efforts with both this Commission and the California Attorney General, among others, and the Commission jointly sponsored the testimony of CHRC's environmental witnesses in the bankruptcy court.⁵ This coordinated effort formed the backdrop against which the PSA was negotiated and against which the Commission tested the PSA in this proceeding. This backdrop also lent importance to CHRC's testimony before the bankruptcy court in the Confirmation Order hearing there, which was necessary for the MSA to become legally binding.

Given the unique procedural context of this proceeding, and its substantive interrelationship with the bankruptcy and other federal court proceedings, we find CHRC's efforts in those courts substantially contributed to D.03-12-035, as §1802(h) requires. While we recognize that a small portion of CHRC's bankruptcy court-related participation (between late October 2001 and mid-April 2002), occurred before we opened this proceeding (on April 22, 2002), we will allow recovery for that portion, since we find this work was necessary to CHRC's subsequent, effective participation in the courts, the negotiation of the PSA, and ultimately, our adoption of the MSA in D.03-12-035.⁶

⁵ The Commission paid some of the invoices tendered by these expert witnesses; CHRC seeks compensation only for its outstanding costs.

⁶ A recent decision of the District Court of Appeals, which examined a somewhat different factual scenario than presented here, confirms that intervenor compensation may be awarded for certain federal court efforts. (See *Southern California Edison Co. v. PUC* (April 19, 2004, B166993), 2004 Cal. App. LEXIS 568, affirming D.02-06-070 and D.03-04-034.) Specifically, the court upheld the Commission's compensation award to TURN for TURN's intervention in

Footnote continued on next page

4.3. CU

CU is the non-profit publisher of *Consumer Reports*. It states that this periodical, together with *ConsumerReports.org* and *Consumer Reports on Health* have a combined paid circulation of approximately 5.5 million subscribers, ten percent of whom reside in California. CU seeks compensation for its participation in this proceeding, beginning in mid-June 2003, “to prevent, and then to redress, the impact and costs that electricity deregulation has had and will have for California’s consumers and economy.” (CU request, p. 3.)

CU claims its efforts focused primarily upon working with TURN to address the cost to ratepayers in the PSA’s plan for PG&E’s emergence from bankruptcy. CU contends it sought to put this large sum in perspective and thereby increase the pressure militating for its reduction. We agree that CU made a substantial contribution through its work with TURN, but after reviewing the record we find its contribution to be more limited in scope than CU urges.

The device of a dedicated rate component (DRC), originally advocated by TURN and supported by CU,⁷ was ultimately made part of D.03-12-035, after TURN and PG&E reached an agreement incorporating a commitment to a DRC. Timesheets submitted by CU show that CU participated with TURN in the development of the DRC strategy and in planning its presentation. Given the important role of the DRC in D.03-12-035, CU’s participation to develop the DRC

federal court litigation to oppose efforts to overturn a Commission decision that adopted TURN’s position.

⁷ CU cites the “joinder” to the testimony sponsored by TURN that CU distributed on September 8, 2003 as evidence of its formal support of TURN’s position.

made a substantial contribution. CU did not, however, present any witnesses of its own, nor did it advance any arguments that materially aided our consideration of the DRC proposal.

In the time records CU submitted, it classified its hours by activity, not by issue. With some exceptions, noted below, the hours CU included in its categories of “base/common,” “joinder with TURN,” and “discovery” should be compensated, because they relate directly to the area in which CU made a substantial contribution. The “joinder with TURN” hours are the heart of CU’s contribution. We conclude that the “base/common” hours are, in general, necessary for work on matters related to CU’s contribution and for continuing to track the proceeding to make sure that the position advocated by CU was moving ahead. We also view the hours spent on discovery as necessary to CU’s development of its position and ability to work effectively with TURN on its proposals.

After CU indicated its joinder with TURN’s DRC proposal in early September 2003, however, CU’s attendance and cross-examination at hearings,⁸ its briefing, and its participation in oral argument did not make a substantial contribution to our decision. The hours CU has identified for those activities, as well as the travel associated with them, should not be compensated.

CU pursued one argument independently of any other party, a proposal to exempt low-income ratepayers enrolled in the California Alternative Rates for

⁸ CU asserts that its cross-examination of Gordon Smith, President and CEO of PG&E, contributed to public understanding of the magnitude of the financial implications of the settlement. This may be true, but increasing public understanding of an issue, without any indication of how it contributed to our decision, falls outside the statutory intervenor compensation program.

Energy (CARE) program from any costs under the PSA. The ALJ ruled, however, that this issue was beyond the scope of the current decision and would be addressed in later proceedings. CU cannot, therefore, claim a substantial contribution to D.03-12-035 on this point.

4.4. Greenlining

Like Aglet, Greenlining filed reply comments on the OII on May 22, 2002 and thereby became a party of record. Greenlining's time records indicate nominal monitoring of this proceeding between May and September, 2002 and additional, very limited monitoring in May 2003, the month before the PHC notice issued. Beginning in late June 2003, Greenlining participated regularly. Greenlining sponsored two witnesses at hearing and filed briefs and comments.

Greenlining sought to ensure environmental benefits for urban, low-income PG&E ratepayers and criticized both the LCC and the subsequent, related Stipulation for failure to do so. Greenlining claims its efforts substantially contributed to D.03-12-035 with respect to two environmental issues.

First, Greenlining successfully urged increased funding for the Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council), a non-profit corporation that will be formed to preserve, and where desirable, improve public access to PG&E's watershed lands. Specifically, Greenlining proposed, and D.03-12-035 requires, a \$30 million augmentation of the \$70 million initially proposed to fund the Stewardship Council. The funding will be paid over ten years and will be recovered from customers in PG&E's retail rates. Two-thirds of the \$30 million augmentation are to be spent to acquire urban parks and recreation areas for inner city youth, and one-third is to provide seed money for environmental scholarships so that inner city youth may visit the watershed

lands. D.03-12-035 charges the Commission's three public appointments to the Stewardship Council's governing board to "champion this \$30 million allocation, among their other duties." (D.03-12-035, *slip op.* at p. 64.)

Second, Greenlining proposed, and D.03-12-035 requires, a \$15 million increase (for a total of \$30 million) in PG&E's funding of a non-profit corporation dedicated to supporting research and investment in clean energy technologies primarily in PG&E's service territory. These shareholder funds are to be paid over five years and will not be recovered in rates.

We agree that Greenlining's participation substantially contributed to D.03-12-035 on these two environmental issues during the June-December 2003 timeframe. Greenlining also requests compensation for time spent in late December 2003 and in early 2004 on matters including urban parks research, Stewardship Council nominations, and rate design issues. This work occurred after D.03-12-035 issued, and while it may be characterized as relating to the subject matter of D.03-12-025 or implementation of the decision, it cannot be characterized as having assisted us in making that decision, which § 1802(h) requires. Like Aglet, we dismiss this portion of Greenlining's request without prejudice; like Aglet, Greenlining may refile, if it chooses, after a relevant Commission order has issued.

Greenlining states that it intends to make additional requests for compensation for future work on the Stewardship Council. As to such requests, we advise Greenlining to review D.98-04-059, which issued in our most recent investigation and rulemaking into intervenor compensation matters. D.98-04-059 addresses the related subject of whether intervenor compensation is available for work on Commission-authorized committees and advisory boards; we concluded that such work is not compensable under the statute. (See

D.98-04-059, *slip op.*, p. 44, 1998 Cal. PUC LEXIS 429, *78.) Greenlining does not distinguish D.98-04-059 or explain how its request for compensation post-D.03-12-025 would meet the statutory definition of “proceeding” in § 1802(f).

4.5. TURN

TURN, which represents residential and small commercial customers, participated in this proceeding from its commencement in April 2002. TURN’s primary focus was advocating that a DRC would reduce the cost of the bankruptcy financing to PG&E’s customers and should form a part of the solution. Ordering Paragraph 9 of D.03-12-035 conditions approval of the MSA upon a DRC and recognizes that it requires legislation (which has since been enacted.) D.03-12-035 estimates the savings attributable to the DRC at “not less than \$1 billion over the term of the financing.” (D.03-12-035, *slip op.*, p. 69.)

TURN also claims contribution for the agreement of PG&E’s holding company, PG&E Corporation, to forego recovery of its bankruptcy litigation costs from the utility, thereby directly reducing the amount needed to finance the utility’s emergence from bankruptcy. As TURN notes, this agreement is a condition precedent to D.03-12-035’s approval of the MSA.

TURN’s participation between June and December 2003 included extensive discovery, preparation of detailed testimony sponsored by its witnesses at hearing, cross-examination of witnesses for opposing parties, and comprehensive briefs and comments. TURN states that it coordinated with other parties actively to avoid duplication and “assure the broadest possible coverage of issues in the limited time available.” (TURN Request, p. 2.) TURN urges that in light of this joint approach:

All consumer intervenors should receive reasonable compensation for their collective work in this proceeding, as it was truly a group effort throughout the proceeding. (*Id.*, pp. 2-3.)

We find that TURN made a substantial contribution to D.03-12-035. TURN did the “heavy lifting” in the proceeding to establish significant flaws in the PSA, and its participation during the June-December 2003 timeframe clearly warrants compensation. TURN’s participation in the earlier stage of this proceeding, prior to the June 2003 announcement of the PSA, requires further consideration, as does work TURN did in the seven months before the OII issued on April 22, 2002.

TURN’s time records show that its attorneys and an outside expert worked on preparation of a public report, which TURN released on January 29, 2002, on the PG&E bankruptcy and alternatives, including use of a DRC. TURN attached this report to its May 10, 2002 opening comments on the OII. The position outlined in the report, and the analysis underlying it, formed the foundation of TURN’s participation in this proceeding prior to the PSA’s negotiation. TURN argues that the work it did, beginning in September 2001 and continuing until review of the PSA commenced in June 2003, should be deemed compensable because it was necessary to the formulation of TURN’s position on the DRC, which D.03-12-035 adopts. TURN argues that if it had not prepared the report before the OII issued, it would have had to do the same review and analysis to support the position it advanced after the OII issued. TURN also argues that its participation in the early part of this proceeding (prior to June 2003) was integral to its ultimate success on the DRC issue in the later part of this proceeding.

We find that TURN’s participation in this proceeding prior to June 2003 substantially contributed to D.03-12-035. Unlike Aglet and Greenlining, TURN

did not merely monitor the early stage of this proceeding; as an active participant at that stage, TURN advocated a position that D.03-12-035 adopts. TURN's involvement in this proceeding from the outset enabled thorough vetting of the DRC proposal, on which TURN prevailed.

Given the enormous stakes the bankruptcy case presented and the attendant time pressure, TURN's efforts prior to the commencement of the investigation were logical. In its NOI, TURN properly informed us that it had performed analysis of PG&E's plan of reorganization prior to our investigation being opened and that it planned to seek compensation for that work in this proceeding (NOI, August 12, 2002, p. 4.) The quality of TURN's pre-investigation analysis and the inseparable relationship of the analysis to its position in our proceeding and our ultimate adoption of the DRC in D.03-12-035 create the nexus of TURN's pre-investigation work with the substantial contribution requirement. We find that work TURN did prior to the issuance of the investigation substantially contributed to D.03-12-035 and should be compensated to the extent TURN's time records reflect no double counting and are reasonable otherwise. We discuss our review of TURN's time records in the following section.

No intervenor should presume, however, that a document prepared to support independent advocacy in advance of the issuance of a Commission proceeding, such as TURN's report, will warrant intervenor compensation. We caution intervenors that producing such a document under the assumption that it will be paid for by a substantial contribution award in a future Commission proceeding is a highly speculative—and potentially expensive--undertaking.

TURN requests compensation for a limited amount of attorney time devoted to development, with Commission staff, of the text of draft legislation

which appeared as Item 45 on the Commission's public meeting agenda of January 1, 2004. The legislation proposed the establishment of the DRC. By a vote of 5-0 the Commission agreed to support the legislation. We conclude that TURN substantially contributed to the Commission's order on this agenda item.

We reach a different conclusion on TURN's compensation request for participation in 2004 on rate design issues and related advice letters. TURN acknowledges that this work occurred after D.03-12-035 issued, and that as of the date TURN filed its request, the Commission had not issued orders on these matters. TURN recognizes that a separate, subsequent request may be a more appropriate means of pursuing compensation for this work. We agree. We dismiss this portion of TURN's request without prejudice, for the same reasons we dismissed similar requests by Aglet and Greenlining; TURN may refile the request at an appropriate time, consistent with this discussion.

5. Reasonableness of Requested Compensation

After we have determined that a customer made a substantial contribution and have established its scope, we then look at whether the compensation requested is reasonable.

The components of this request must constitute reasonable fees and costs of the customer's participation that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

Also, to assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to

ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons.

5.1. Aglet

Aglet requests \$131,847.28 for its participation in this proceeding, as follows:

<u>Professional time (principal & consultant)</u>		
• Weil, principal, 2002-2004	418.5 hrs @ \$220 hr	\$92,070.00
• Czahar, consultant, 2003	139.75 hrs @ \$220 hr	30,745.00
<u>Travel & Comp-related time</u>		
• Weil, 2003-2004	66.0 hrs @ \$110 hr	7,359.00
Copies		523.54
Postage, overnight delivery		243.45
FAX charges		78.50
Travel expenses (bridge, parking, vehicle mileage)		766.04
Consultant's expenses (Fed. Ex., copies, phone & FAX)		61.75

Aglet's productivity is hard to assess, particularly since we did not adopt the specific positions Aglet advocated, but rather found Aglet's substantial contribution in its developing the record regarding financial consequences of the PSA and alternative outcomes. As Aglet states, it is difficult to assign a dollar value to intangible benefits. Although we were not persuaded to adopt Aglet's

proposals, they assisted us in testing the merits of key aspects of the PSA and determining to endorse the MSA, an outcome that benefited ratepayers significantly.

Aglet has documented the hours claimed by Weil and his financial modeling consultant, Czahar, by presenting a daily breakdown of those hours and an accompanying brief description of each activity. We note, approvingly, that Aglet has provided an allocation of its professional time among seven issues; had we determined to eliminate certain issues from the award, this breakdown would have facilitated the process. We will not eliminate time spent on any of the issues, however, as Aglet's work on all of the issues made a substantial contribution, as discussed above.

We adjust Weil's professional hours to exclude the 7.6 hours of professional time claimed prior to July 2003, as well as the 12 hours of professional time claimed for work on rate design issues in 2004. While we agree compensation may be awarded for time spent reviewing TURN's supplemental NOI and for other parties' NOIs, we do not authorize compensation for that review (2.1 hours) at Weil's full professional rate, but at one-half of that rate, as for other compensation-related activities and for travel. Weil's request includes compensation for 44.9 hours spent traveling between his home/office and hearings/meetings during 2003. The request, while large, is properly documented and we allow it, consistent with our practice to allow compensation for travel at a reduced rate. With these adjustments we find that the hours claimed are reasonable.

Aglet seeks an hourly rate of \$220 per hour for work performed by Weil in this proceeding between 2002 and 2004. The Commission previously approved this rate in D.00-07-015. Aglet seeks an hourly rate of \$220 per hour for work

performed by Czahar in 2003. The Commission previously approved this rate in D.03-07-010.

The itemized direct expenses submitted by Weil must be adjusted to remove costs in 2002 and 2004 associated with the hours we have rejected or deferred to a subsequent compensation request. These adjustments total \$57.94 and reduce Weil's expense claim from \$1,611.53 to \$1,553.59. As adjusted, the expenses claimed by Weil and Czahar are in line with those we have awarded in other complex, multi-party proceedings, and we find that the expenses are reasonable.

Thus, we award Aglet \$127,147.37 as shown below.

Experts	Year	Rate	Hours	Total
Weil	2003	\$ 220.00	396.80	\$87,296.00
Czahar	2003	\$ 220.00	139.75	\$30,745.00
Subtotal				\$118,041.00
Expert Compensation Request/Travel Time				
Weil	2003, 2004	\$ 110.00	68.10	\$7,491.00
Subtotal				\$7,491.00
Expert time				\$125,532.00
Direct Expenses				\$1,615.34
Total				\$127,147.34

5.2. CHRC

CHRC requests total compensation in the amount of \$284,415.79; \$134,026.32⁹ for its participation in this proceeding and \$150,389.47 for its participation in the bankruptcy and related court actions.¹⁰ We discuss both parts of CHRC's request below.

The following elements comprise CHRC's request for its participation in this proceeding:¹¹

⁹ This sum contains an arithmetic error, and should be \$134,036.32. Our tally of the fees requested by Roos-Collins, Bonham and Ridolfi, with compensation-related activity billed at one-half the requested hourly rate, is \$127,372.50, not \$127,362.50.

¹⁰ This is the sum outstanding for participation in the court actions after receipt of \$42,437.18 from the Commission for shared use of resources (attorneys and expert witnesses) in those proceedings.

¹¹ Unlike its separately tabulated subtotals of the hours spent by each attorney or expert in either the OII or the related court actions, CHRC does not provide separately tabulated subtotals, by proceeding, for each category of the other, direct expenses (telephone, postage, etc.) it incurred. CHRC's supporting records, included with its request, do segregate these expenses by proceeding. The expense category subtotals in the tables above are based on CHRC's supporting records.

I.02-04-026		
<u>Professional time (attorneys & experts)</u>		
• Roos-Collins, attorney, 2003	248.2 hrs @ \$325 hr	\$80,665.00
• Bonham, attorney, 2003	157.5 hrs @ \$275 hr	43,312.50
• Ridolfi, paralegal, 2003-2004	6.8 hrs @ \$75 hr	510.00
• Sutton, land conservation expert, 2003	31 hrs @ \$150 hr	4,650.00
• Park, GIS mapping, 2003	1.5 hrs @ \$150	225.00

<u>Comp-Related Time</u>		
• Roos-Collins, 2003	10 hrs @ 162.50 hr	1,625.00
• Bonham, 2004	8 hrs @ 137.50 hr	1,110.00
• Ridolfi, 2004	4 hrs @ \$37.50 hr	150.00
Phone, conference call, FAX charges		822.27
Postage, overnight delivery		71.64
Copies		182.57
Travel expenses		134.80
LEXIS		15.49
GIS mapping		583.00

The following elements comprise CHRC's request for its participation in the court actions related to this proceeding:

Bankruptcy and Related Court Proceedings		
<u>Professional time (attorneys & experts)</u>		
• Roos-Collins, attorney, 2001-2003	268.0 hrs @ \$325 hr	\$87,100.00
• Bonham, attorney, 2001-2003	242.0 hrs @ \$275 hr	66,550.00
• Ridolfi, paralegal, 2002	38.8 hrs @ \$75 hr	2,910.00
• Rothert, water policy expert, 2002	6.0 hrs @ \$150 hr	900.00

• Purkey, hydrologist, 2002	96.8 hrs @ \$200	19,360.00
• Trush, fisheries biologist, 2002	58.5 hrs @ \$200	11,700.00
Phone, conference call, FAX charges		1,801.13
Postage, overnight delivery		242.74
Copies		751.55
Travel expenses		500.10
Lodging and meals		326.68
LEXIS		663.50

CHRC does not ascribe a monetary value to the ratepayer benefit of its participation, and we recognize that the value of the end product of CHRC's efforts, the LCC Stipulation attached to the MSA, eludes ready quantification. We agree with CHRC that the Stipulation provides ratepayers with a number of qualitative benefits, including enjoyment of the enhanced recreational value of the watershed lands. Some benefits are likely to provide a financial value, as well; for example, the systematic planning the Stipulation requires will identify opportunities for improved maintenance which should reduce PG&E's liabilities for fire damages or harm to fish, wildlife and protected plant species.

The record provides other indicia of CHRC's productivity, besides this qualitative assessment of ratepayer value. For example, CHRC was the only conservation organization among the fourteen parties that submitted prepared testimony or briefs on the LCC. In the bankruptcy court, CHRC, a party-creditor, was the only conservation organization to participate. At the Ninth Circuit, it was the only private party to join the Commission and other local and state governmental entities in litigation of the preemption issue. CHRC states that in the court actions its coordination efforts included, among other things, reaching

agreements on the division of responsibility associated with specific work products so as to minimize duplication.

CHRC has documented the hours claimed by its legal team and its various environmental experts by presenting a daily breakdown of those hours and an accompanying brief description of each activity. The record-keeping clearly isolates time attributable to this proceeding from that attributable to the related court actions. Since CHRC's time in this proceeding was devoted almost exclusively to the LCC, and since most of its time in the court actions was devoted to environmental issues, it does not allocate its time further among sub-issues. CHRC's request does not ask for compensation for time that its attorneys, Roos-Collins and Bonham, spent traveling to hearings or meetings.¹²

With respect the Commission proceeding, we make only a minor adjustment to CHRC's hours to remove one hour Ridolfi recorded for preparation of an ex parte notice on January 6, 2004, after the issuance of D.03-12-035. With this adjustment, we find that the hours claimed are reasonable.

With respect to the related court actions, we remove 8.4 hours that Ridolfi recorded for data management and other administrative or clerical, rather than paralegal, tasks. Trush's time records report travel on two days but do not indicate that travel time was billed at one-half of his usual rate, as we require. We estimate his travel time at 6 hours and reflect that adjustment in our award.

¹² CHRC's email response to inquiries from the ALJ coordinating intervenor compensation review clarifies this matter. CHRC's response has been placed in the correspondence file for this proceeding, together with email responses from other intervenors to similar inquiries.

CHRC seeks the same rates for the attorneys and experts it employed for its efforts before this Commission and in the federal courts. We have not previously adopted rates for any of CHRC's attorneys or experts.

CHRC seeks an hourly rate of \$325 for work performed by attorney Roos-Collins between 2001 and 2004. Roos-Collins is a senior attorney with the Natural Heritage Institute and has practiced law since 1987. He previously served as a Deputy Attorney General with the California Office of Attorney General and as an Attorney-Advisor with the Office of General Counsel, U.S. Environmental Protection Agency. Roos-Collins holds a J.D. (1986) and a B.A. (1975). CHRC does not make a direct comparison of Roos-Collins' experience to other attorneys that have been awarded rates by the Commission. Roos-Collins' background compares reasonably to attorney Robert Finkelstein, of TURN, who was admitted to the California Bar in 1985 and has significantly more experience practicing before this Commission than Roos-Collins. Finkelstein was awarded hourly rates of \$310 in 2001, \$340 in 2002, and \$365 in 2003. Only 11.5 of the hours requested for Roos-Collins occurred in 2001, with the remainder of substantive work taking place in 2002 and 2003. The requested rate of \$325 per hour is reasonable for 2001-2004 hours claimed in comparison to the market rates for similar services from comparably qualified persons. Because the 2004 hours requested relate solely to compensation matters, we will compensate them at half the awarded 2003 rate.

CHRC seeks an hourly rate of \$275 for work performed by attorney Bonham between 2001 and 2004. Bonham is California Counsel for Trout Unlimited, a conservation organization. Bonham has practiced law since 2000 and holds a J.D. (2000) and a B.A. (1990). Bonham's background compares reasonably to attorney Matthew Freedman, of TURN, who has a 1999 J.D. and

several years of relevant work experience prior to obtaining his J.D. Freedman was awarded hourly rates of \$190 in 2001, \$200 in 2002, and \$225 in 2003. Only 10.0 of the hours requested for Bonham occurred in 2001, with the remainder of substantive work taking place in 2002 and 2003. The requested rate of \$275 per hour for work in 2001 through 2004 is high in comparison to the market rates for similar services from comparably qualified persons. Bonham should be awarded \$185 per hour in 2001, \$195 in 2002 and \$220 in 2003. Because the 2004 hours requested relate solely to compensation matters, we will compensate them at half the awarded 2003 rate.

CHRC seeks an hourly rate of \$75 for work performed by paralegal Ridolfi between 2002 and 2004. Ridolfi has been a paralegal for three years and received her B.S. in 2002. The rate requested for Ridolfi is consistent with the rates we have previously authorized for recent college graduates and is reasonable in comparison to the market rates for similar services from comparably qualified persons. In addition, as we explained in D.04-04-012, we ordinarily halve the rate awarded for time spent on compensation-related matters because we do not believe compensation requests ordinarily require the skill of an attorney to prepare. Thus, although we reduce the hourly rate for the attorneys, we award the full hourly rate to CHRC for Ridolfi's time spent on the compensation request.

CHRC seeks an hourly rate of \$150 for work performed by its land conservation expert, Sutton, in 2003. Sutton is Director of the Trust for Public Lands Sierra Nevada Program and Northern California Program where he has completed more than 25 land conservation projects. He holds an M.B.A. (1990), and a B.A. in Ecology (1981). Sutton's training and experience compare reasonably to scientist Roland Hwang of the Natural Resources Defense Council

(NRDC), who was awarded \$150 per hour for work performed in 2003. The requested rate of \$150 per hour is reasonable for 2003 hours in comparison to the market rates for similar services from comparably qualified persons.

CHRC seeks an hourly rate of \$150 for work performed by its water policy expert, Rothert, in 2002. Rothert is Associate Director of Dam Programs for American Rivers and has experience as a watershed planner for numerous organizations. He holds an M.S. in Water Resources Management (1995), and a B.A. in Ecology (1987). Rothert's training and experience compare reasonably to scientist Hwang of NRDC, who was awarded \$135 per hour for work performed in 2002. The requested rate of \$150 per hour for work in 2002 is high in comparison to the market rates for similar services from comparably qualified persons. Rothert should be awarded \$135 per hour in 2002.

CHRC seeks an hourly rate of \$200 for work performed by its hydrologist, Purkey, in 2002. Purkey is a senior hydrologist for the Natural Heritage Institute, where he focuses on modeling water systems. He holds a Ph.D. (1998), an M.S. (1986) and a B.A. (1983). Purkey's training and experience compares reasonably to Peter Miller, of NRDC, who was awarded a rate of \$150 for work performed in 1998 in D.99-11-006, although Purkey holds a Ph.D. and Miller does not. Given increases in experience and rates over that time period, as well as Purkey's additional educational training as compared to Miller, the requested rate of \$200 per hour is reasonable for 2002 hours in comparison to the market rates for similar services from comparably qualified persons.

CHRC seeks an hourly rate of \$200 for work performed by its fisheries biologist, Trush, in 2002. Among other positions, Trush is an adjunct professor in the Fisheries Department at Humboldt State University and president and co-founder of a consulting firm specializing in evaluation of downstream impacts of

dams and planning and implementation of river restoration plans. He holds a Ph.D. (1989), an M.S. (1979) and a B.S. (1974). Trush's experience and training compare reasonably to Alan Nogee, of the Union of Concerned Scientists, who was awarded an hourly rate of \$200 in 2002 and \$215 in 2003. The requested rate of \$200 per hour is reasonable for 2002 hours in comparison to the market rates for similar services from comparably qualified persons.

CHRC seeks an hourly rate of \$150 for work performed by its GIS expert, Robin Park, in 2003. The rate for Park is derived from the supporting tables in CHRC's claim, but no documentation is provided regarding Park's experience or training. CHRC claims only 1.5 hours of time for Park, but because CHRC does not provide any documentation regarding training and experience, we cannot assess a proper hourly rate for Park's efforts and we do not adopt an hourly rate for Park for 2003.

The itemized direct expenses submitted by CHRC in relation to its participation in the OII must be adjusted to remove costs incurred in 2003 after the issuance of D.03-12-035. These adjustments total \$83.87, and reduce CHRC's expense claim from \$1,809.77 to \$1,725.90. As adjusted, the expenses claimed by CHRC are in line with those we have awarded in other complex, multi-party proceedings, and we find that the expenses are reasonable. The bankruptcy actions account for another \$4,285.70 in expenses. We reduce these to remove \$126.50 in unexplained "meeting expenses" recorded over several days. We also remove \$71.64 in meal and lodging charges for Trush, again for lack of explanation. The reduced sum, \$4,087.56, is in line with expense reimbursements we have awarded in other complex, multi-party proceedings, and we find that the expenses are reasonable.

Thus, we award CRC \$255,971.28 as shown below.

Attorneys	Year	Rate	Hours	Total
Roos-Collins	2001-2003	\$325.00	516.2	\$167,765.00
Bonham	2001	\$185.00	10.0	\$1,850.00
Bonham	2002	\$195.00	166.0	\$32,370.00
Bonham	2003	\$220.00	223.5	\$49,170.00
Subtotal				\$251,155.00

Attorney Compensation Request/Travel Time

Roos-Collins	2003, 2004	\$ 162.50	10.0	\$1,625.00
Bonham	2004	\$ 110.00	8.0	\$880.00
Subtotal				\$2,505.00
Attorney Time subtotal				\$253,660.00

Paralegal	Year	Rate	Hours	Total
Ridolfi	2002-2003	\$ 75.00	40.2	\$3,015.00
Paralegal Time subtotal				\$3,015.00
Attorney/Paralegal time				\$256,675.00

Experts	Year	Rate	Hours	Total
Sutton	2003	\$ 150.00	31.0	\$4,650.00
Park	2003	\$ none	1.5	\$0.00
Rothert	2002	\$ 135.00	6.0	\$810.00
Purkey	2002	\$ 200.00	96.8	\$19,360.00
Trush	2002	\$ 200.00	52.5	\$10,500.00
Subtotal				\$35,323.00

Expert Travel Time				
Trush	2002	\$ 100.00	6.0	\$600.00
Expert Time Subtotal				\$35,920.00
Direct Expenses				\$5,813.46
Total				\$298,408.46
Less Funds Received				(\$42,427.18)
Total Awarded				\$255,971.28

5.3. CU

CU requests \$ 96,663.55 for its participation in this proceeding, as follows:

<u>Professional time</u>		
• Savage, attorney, 2003-2004	238.11 hrs @ \$405 hr	\$96,434.55
Messenger service		224.00
Travel expenses		5.00

In the alternative, CU requests \$ 83,396.08, based on several factors: a lesser hourly rate (\$365) for professional hours; and billing for travel and compensation activities at a rate equal to one-half the professional rate. Because this alternative complies with our practice of compensating at only one-half of the hourly rate for hours spent on travel and compensation-related work, we use it as the basis for our consideration. However, we first correct for an arithmetic error related to the rate and time requested for compensation-related matters, which reduces the request to \$81,390.40:¹³

<u>Professional time</u>		
• Savage, attorney, 2003-2004	206.61 hrs @ \$365 hr	\$75,412.65
<u>Compensation and travel time</u>		
• Savage, attorney, 2003-2004	31.5 hrs @ \$182.50/hr	\$5,748.75
Messenger service		224.00
Travel expenses		5.00

¹³ CU charged the full hourly rate for compensation related time in 2003.

As we noted in section 4.3 above, CU made a substantial contribution in a limited area. Because of this limited scope, the 47.44 hours CU allocated to hearings, the 65.42 hours allocated to briefs, and 1.83 hours of travel for the sole purpose of attending hearings did not make a substantial contribution and cannot be compensated. The 1.94 hours spent on the exemption of CARE participants, an issue excluded from this proceeding, is also not compensable.

Nor can we compensate CU for time spent in discussions with other parties or reviewing the MSA or underlying record in late December 2003 and early 2004, after D.03-12-035 issued. That time cannot be characterized as having assisted us in making our decision, which § 1802(h) requires. CU recorded .37 such hours in 2003 and .77 in 2004, which we disallow. Further, time spent talking with the press is not compensable. (D.03-10-056, *slip op.*, pp. 18-19, 2001 Cal PUC LEXIS 1262 *26.) We therefore deduct the .68 hours recorded for that purpose.

The time CU spent on its compensation request is compensable. CU has classified 0.9 hours in the “base/common” issue category that our review finds to be compensation-related. We therefore reduce the “base/common” hours by 0.9 hour and increase the compensation hours by 0.9 hour.

With these adjustments, which we summarize in the table below, we find that the hours claimed are reasonable.

Activity/Issue	Hours claimed	Adjustments	Hours allowed
Base/Common	34.92	- 2.72	32.20
Joinder TURN	24.21	0	24.21
Discovery	31.95	0	31.95
Hearings	47.44	- 47.44	0
Briefs	65.42	- 65.42	0
CARE Proposal	1.94	- 1.94	0
Travel ¹⁴	7.16	- 1.83	5.33
Comp. Request	24.34	+ 0.9	25.24

CU seeks an hourly rate for attorney Mark Savage of \$405 for work performed in 2003 and 2004. Savage is a Senior Attorney at CU and holds a J.D. (1988). CU also calculates its request utilizing a rate of \$365. The Commission previously approved a rate of \$300 for work performed in 2002 in D.03-08-012. The requested rate (\$405) represents a 35.0% increase from the approved rate for 2002 for Savage. Even the proffered alternative rate of \$365 represents nearly a 22% increase from the approved 2002 rate. CU states that Savage has been awarded \$405/hour for 2003 work by the Department of Insurance, but recognizing that this increase would be quite significant, suggests that the 2003 rate we awarded Robert Finkelstein of TURN could be an appropriate proxy.

Finkelstein has 5 years more experience practicing law than Savage and thus would be expected to command an hourly rate somewhat higher than

¹⁴ Travel and compensation request time are shown here at the full number of hours, in order to show adjustments clearly. The award summary reflects application of 50% of the professional rate for these hours.

Savage for work during the same time period. In addition, the market data relied on by TURN to justify the hourly rates of their attorneys do not support Savage's requested rates but instead point to lower ranges of reasonable rates for comparably qualified persons offering similar services.¹⁵ In addition, CHRC requested \$325/hour for attorney Roos-Collins, who has 2 more years of legal practice than Savage. Based on our review of rates authorized for other attorneys appearing before us and the market information supplied by all the intervenors in this proceeding, we find that \$320/hour is a reasonable rate for Savage.

The direct expenses submitted by CU, consisting mostly of costs for messenger service, are in line with the costs we allow for other intervenors in this proceeding and in other complex, multi-party proceedings. We find that the expenses are reasonable.

Thus, we award CU \$33,465.40 as shown below.

Attorney	Year	Rate	Hours	Total
Savage	2003	\$ 320.00	88.36	\$28,275.20
Savage comp/travel	2003, 2004	\$ 160.00	30.57	\$4,891.20
Subtotal				\$33,166.40
Direct Expenses				\$229.00
Total				\$33,465.40

5.4. Greenlining

Greenlining requests \$201,290.34 for its participation in this proceeding, which includes a 75% efficiency multiplier for the fees of its attorneys and experts, as follows:

¹⁵ As additional evidence that lower rates are within the range of reasonable market rates is the fact that TURN's outside counsel requested \$385/hour for several attorneys with significantly more years of legal experience than Savage.

<u>Professional time (attorneys & experts)</u>		With 75% Multiplier
• Gnaizda, attorney, 2003	99.6 hrs @ \$450 hr	\$78,435.00
• Gnaizda, attorney, 2004	12.4 hrs @ \$495 hr	10,741.50
• Berrio, attorney, 2002	6.2 hrs @ \$265 hr	2,875.25
• Berrio, attorney, 2003	120.8 hrs @ \$290 hr	61,306.00
• Berrio, attorney, 2004	15.9 hrs @ \$310 hr	8,625.75
• Gamboa, expert, 2003	14.1 hrs @ \$350 hr	8,636.25
• Gamboa, expert, 2004	1.8 hrs @ \$385 hr	1,212.75
• Phillips, expert, 2003	42.5 hrs @ \$360 hr	26,775.00

<u>Professional time (paralegal)</u>		Without Multiplier
• Abastillas, 2003	7.1 hrs @ \$90 hr	639.00
• Abastillas, 2004	0.75 hr @ \$110	82.50
Copies		1,597.20
Postage		355.14
Other expenses		9.00

Greenlining states that its participation should be valued at \$45 million or more, based on the \$30 million augmentation in ratepayer funding for the Stewardship Council and the additional \$15 million in PG&E shareholder funding for the new, clean energy technologies nonprofit. As Greenlining points out, these monetary benefits have potentially far-reaching qualitative benefits as well -- the first, for urban, disadvantaged ratepayers and the second, for all ratepayers. Greenlining was the only party to advocate these positions.

Greenlining has documented the hours claimed by its lawyers and experts by presenting a daily breakdown of those hours and an accompanying brief

description of each activity. Our review of these records requires us to make several adjustments, however. First, as we did for Aglet, we adjust these hours to exclude professional time claimed prior to June 2003 (Berrio, 6.4 hours), as well as professional time claimed for work on issues after D.03-12-035 issued (Gnaizda, 13.9 hours; Berrio, 5.4 hours; Gamboa, 1.8 hours; Abastillas, 0.75).

Second, we remove time that is not compensable through the intervenor compensation program, such as time devoted to press communications or to communications with members of the California Legislature and their staff (Gnaizda, 1.3; Berrio, 2.0 hours). (See D.03-10-056, *supra*.)

Third, we adjust Greenlining's claimed hours to separate out time spent on travel or on compensation-related activities, which are compensable at one-half of the professional rate. Greenlining's task descriptions properly describe when time was spent on these activities, but Greenlining's request does not show its billing calculation for this time, which makes clear tracking difficult. For example, the time records appear to reduce by half the number of hours spent on preparation of the compensation request (Berrio, 21.5 hours reduced to 10.7 hours), rather than billing the full number of hours by one-half the hourly rate. The time records do not show any concomitant reduction for time spent preparing Greenlining's NOI, reviewing the NOIs of others, etc. (Berrio, 8.4 hours), or for travel (Berrio, approximately 3.0 hours¹⁶). Since Greenlining's request applies a 75% multiplier to all professional time (except

¹⁶ Greenlining's time records do not separate time spent traveling to and from hearings from time spent at hearings. Greenlining should do so in future. However, for the purposes of this request we estimate roundtrip travel between Greenlining's offices and the Commission at 0.5 hours.

paralegal time), it appears that all travel time and part of the time spent on compensation related activities has been escalated in Greenlining's request. We address the multiplier, below, as part of our hourly rate discussion.

Finally, we note, approvingly, that Greenlining's request allocates Berrio's time among four issues: general; environmental issues/urban parks; excessive bankruptcy fees; and diversity, philanthropy, executive compensation. We make a minor, final adjustment to remove time devoted to the last two issues (0.5 and 1.5, respectively), since Greenlining's request does not mention them and thus does not discuss whether, and if so, how, they are related to Greenlining's substantial contribution. While Gnaizda's time and Greenlining's experts' time is not allocated, their time records reflect a focus on the environmental issues Greenlining's request discusses. With the adjustments described, we find that the hours claimed are reasonable.

Greenlining seeks an hourly rate of \$450 for work performed by attorney Robert Gnaizda in this proceeding in 2003. The Commission previously approved a rate of \$435 for his work performed in 2002 in D.03-10-062. Based on additional experience and inflation, a rate of \$450 per hour for 2003 (a 3.4% increase) is reasonable. Because we defer consideration of work performed in 2004, we do not address a 2004 rate for Gnaizda. The requested rate of \$450 per hour is reasonable for 2003 hours in comparison to the market rates for similar services from comparably qualified persons.

Greenlining seeks an hourly rate of \$290 for work performed by attorney Itzel Berrio in this proceeding in 2003 and \$310 per hour for work performed in 2004. The Commission previously approved a 2002 rate for Berrio in D.03-10-062 of \$265. Greenlining states that Berrio, who has practiced law since 1997, should be considered a junior partner. Berrio's training and experience is comparable to

that of Osa Armi, also a 1997 law school graduate, who represented Save Southwest Riverside County. In D.03-04-050 and D.04-02-026 we found that Armi and Berrio have comparable experience. In D.04-02-026, Armi was awarded a 2003 hourly rate of \$230 (an increase of less than 5% over her 2002 rate). Enrique Gallardo, another 1997 law school graduate, was awarded a 2003 rate of \$265 in D.04-03-030. For these reasons, the requested rate of \$290, an increase of 9.4% from the 2002 rate, is high compared to the rates awarded for similar services from comparably qualified persons. A rate of \$275 per hour for work performed in 2003 (a 3.8% increase) is reasonable in comparison to the market rates for similar services from comparably qualified persons. Because we defer consideration of the substantive work Berrio performed in 2004, we do not adopt a 2004 rate for Berrio, but instead utilize half the adopted 2003 rate for her time spent on compensation matters in 2004 without prejudice to Greenlining's ability to seek a rate for 2004 in other proceedings.

Greenlining seeks an hourly rate of \$350 for work performed by expert John Gamboa in this proceeding in 2003. The Commission previously approved an hourly rate of \$310 for work performed in 2001 in D.03-10-062. Greenlining does not provide any comparison to compensation paid to others providing similar services as those provided by Gamboa in this proceeding, making the reasonableness of the requested increase from the authorized 2001 rate to the 2003 rate difficult to assess. We do not know whether rates for others offering comparable services have increased or not. In the absence of this information, we utilize an annual escalation rate of 3.4% (the same percentage increase sought by and adopted for Gnaizda) to set a 2003 rate of \$330 per hour. Because we defer consideration of work performed in 2004, we do not address a 2004 rate for Gamboa.

Greenlining seeks an hourly rate of \$360 for work performed by its expert Michael Phillips in this proceeding in 2003. This is the rate Phillips billed Greenlining for his services. The Commission in D.03-04-050 approved a rate of \$290 for Phillips' work performed in 2001. The requested rate of \$360 for 2003 represents an increase of 11.5% per year since 2001. Greenlining describes Phillips' background and experience, but does not provide any comparison to compensation paid to others providing services similar to those provided by Phillips in this proceeding, making the reasonableness of the requested increase difficult to assess. In the absence of this information, we utilize an annual escalation rate of 3.4% (the same percentage increase sought by and adopted for Gnaizda) to set a 2003 rate of \$310 per hour. Because we defer consideration of work performed in 2004, we do not address a 2004 rate for Phillips.

Greenlining seeks an hourly rate of \$90 for work performed by paralegal Noelle Abastillas in this proceeding in 2003. The Commission has not previously approved a rate for Abastillas. Abastillas is a 2003 college graduate who worked in a paralegal capacity for Greenlining in this proceeding. In past decisions we awarded recent college graduates and novice paralegals a rate of \$75 per hour for work performed in 1999 and \$85 per hour for work performed in 2002. Given these rates, \$90 is a reasonable rate for this type of work in 2003. Because we defer consideration of work performed in 2004, we do not address a 2004 rate for Abastillas.

Next we turn to Greenlining's request that we apply a 75% multiplier to these hourly rates. Greenlining states that its participation justifies a multiplier of as much as 150%. Greenlining claims that: Its overall fee request is modest compared to PG&E's litigation expense; its fee request is based on below-market hourly rates; the monetary value of its effort is more than 200 times greater than

its total compensation request; and the ALJ's refusal to grant Greenlining's request for a "preapproved" finding of substantial contribution created a level of risk that prevented it from retaining additional experts, which then required unusual efficiency on Greenlining's part. As discussed below, we decline to apply a multiplier to Greenlining's hourly rates.

In practice, a multiplier award is rare; it represents an additional cost to ratepayers, which must be justified as fair and reasonable. As the Commission explained in a recent intervenor compensation decision, "our standards for applying hourly rate multipliers to attorney fees are necessarily high. If we did not set and maintain high standards, many attorney fees in compensation requests would include multipliers and we would no longer be adopting attorney fees based on market rates for comparable training and experience as required by Section 1804." (D.02-09-003, 2002 Cal. PUC LEXIS 531, *18.) This policy, equally applicable to multipliers for expert witness fees, is not new but has been articulated in various ways in intervenor compensation decisions dating from the mid-1980s.¹⁷

Commission decisions authorize two different kinds of multipliers, sometimes differentiated as either an "efficiency adder" or a "fee enhancement." Both are applied to the authorized hourly rate. An "efficiency adder" has been approved where a customer's participation involved skills or duties beyond those normally required. An example is when an attorney develops and sponsors necessary technical testimony, performing the dual roles of counsel and expert not only with a very high degree of professionalism but also at a lower

¹⁷ See D.98-04-059, *supra*, which we issued in our most recent major intervenor compensation rulemaking and which confirms this policy.

total cost than the hourly fees of two individuals. A “fee enhancement” has been approved where the Commission determined the intervenor had achieved exceptional results.¹⁸

Returning to Greenlining’s arguments for a multiplier here, we find those arguments to be unpersuasive. We have never “preapproved” substantial contribution (i.e., declare before holding hearings, reviewing briefs and issuing our decision in a proceeding that an intervenor would definitely make a substantial contribution in that proceeding). Thus, we have treated Greenlining no differently than we treated other intervenors, and Greenlining’s participation here was no riskier than in other proceedings, nor did Greenlining incur risks not imposed on other intervenors. Review of the record also does not establish exceptional efficiency in Greenlining’s development of testimony or pleadings. Greenlining’s approved hourly rates, moreover, are not below market. They are in line with those authorized for other participants in this proceeding and in other proceedings. As required by § 1806, we have set Greenlining’s hourly rates

¹⁸ Our research indicates that the Commission has reviewed requests for application of an hourly rate multiplier in approximately 40 decisions since 1986. The Commission has granted about two-thirds of the requests (in some form). Only about one-third of the grants (fewer than 10 decisions) are for fee enhancements; approximately two-thirds of the grants authorize efficiency adders. D.99-04-023, issued in the Commission’s first “slamming” investigation, granted Greenlining the highest fee enhancement multiplier in any of the reviewed decisions (“5” or a 500% increase of the hourly rates for each of three expert witnesses). The investigation was unique in many ways and the compensation award to Greenlining was itself unique. The funding source was unclaimed reparations to long distance telephone customers who had been slammed but who could not be located. (See 1999 Cal. PUC LEXIS 223.) By contrast, here, as in most intervenor compensation awards, the money will ultimately be paid by ratepayers in future rates.

on the basis of “market rates paid to persons of comparable training and experience who offer similar services.”

Greenlining’s argument concerning the value of the result it obtained versus its participation costs also suffers from several frailties. On the one hand, if this valuation argument is applied to TURN, the ratio is even greater (at least 1,000 to 1) and by comparison, Greenlining’s effort does not appear so successful.¹⁹ Such an assessment, alone, cannot be the basis for calculating compensation awards, tending, as it does, to suggest that “winning is everything” -- a policy that we rejected in D.98-04-059, *supra*.

On the other hand, this valuation argument does not recognize the role of other parties in achieving the outcome which Greenlining’s argument implies is solely due to Greenlining’s efforts. Intervenor CHRC, and other parties who claim no intervenor compensation, laid the necessary groundwork by negotiating the Stipulation to the LCC. In noting this fact, we in no way minimize the importance of Greenlining’s contribution. The question is whether that contribution was so innovative, unique or otherwise exceptional as to merit a multiplier. We find that it was not. As we recognize repeatedly in today’s decision, this proceeding is a highly unusual one, and many parties, including each of the four other intervenors claiming compensation, contributed to D.03-12-035. Our award reasonably compensates Greenlining’s attorneys and experts for their efforts on behalf of ratepayers. We decline to apply a multiplier to increase the award.

¹⁹ TURN has not asked for a multiplier in this case and we have not awarded one.

With respect to its direct expenses, Greenlining provides a total for each of the three expense categories claimed (copies, postage, and other) but does not include any records itemizing the costs within each category or the dates incurred. Thus, we cannot readily segregate and remove costs incurred during 2002 and after the issuance of D.03-12-035, to reconcile them with hours rejected or deferred during those periods. However, the postage costs and the nominal cost for other expenses are within the range of costs we have found reasonable for other intervenors who participated on a scale similar to Greenlining's. Therefore, we approve reimbursement. Because the total for copies is undocumented and because it is about three times as great as Aglet's request, which is meticulously documented, we reduce it by one-third, to \$532.40. However, we allow expenses for Greenlining's expert, which appear on the expert's supporting invoice but have been omitted from Greenlining's request. These costs are \$254.72 for airplane rental and photography of portions of the PG&E's watershed lands. As adjusted, we find that Greenlining's expenses are reasonable.

Thus, we award Greenlining \$96,577.01 as shown below.

Attorneys	Year	Rate	Hours	Total
Gnaizda	2003	\$ 450.00	96.8	\$43,560.00
Berrio	2003	\$ 275.00	105.0	\$28,875.00
Subtotal				\$72,435.00

Attorney Compensation Request/Travel Time

Berrio	2003	\$ 137.50	11.4	\$1,567.50
Berrio	2004	\$ 137.50	21.5	\$2,956.25
Subtotal				\$4,523.75
Attorney Time subtotal				\$76,958.75

Paralegals	Year	Rate	Hours	Total
Abastillas	2003	\$ 90.00	7.1	\$639.00
Attorney/Paralegal time				\$77,597.75

Experts	Year	Rate	Hours	Total
Gamboa	2003	\$ 330.00	14.1	\$4,653.00
Phillips	2003	\$ 310.00	42.5	\$13,175.00
Expert time subtotal				\$17,828.00
Attorney/Paralegal/Expert Total				\$95,425.75
Direct Expenses				\$1,151.26
Total				\$96,577.01

5.5. TURN

TURN requests \$889,913.85²⁰ for its participation in this proceeding, as follows:

<u>Professional time (in-house attorneys)</u>			
• Florio, 2001	27.25 hrs	@ \$350 hr	\$9,537.50
• Florio, 2002	33.25 hrs	@ \$385 hr	12,801.25
• Florio, 2003-2004	369 hrs	@ \$435 hr	160,515.00
• Wu, 2001	60 hrs	@ \$350 hr	21,000.00

²⁰ TURN's original request was \$890,784.85. TURN's outside counsel, in an email response to inquiries from the ALJ coordinating our intervenor compensation program, asks that we reduce a paralegal billing by 11.7 hours, or \$1,653.00.

This adjusted request contains an arithmetic error, and should be reduced by another \$1,044.00, for a lesser total of \$888,088.85. This second adjustment is attributable to calculation of O'Neill's fees per the figures reflected in the table below (regarding outside counsel). Thus, as shown, O'Neill's total fee request should be \$177,675.95 (i.e., \$174,217.50 at the professional rate plus \$3,458.25 at one-half of that rate), not the \$178,719.75 reported in the time records summary attached to the request. The time records report 418.8 hours for O'Neill, but identify 2.4 of these hours as noncompensable, 11.9 as travel, and 4 as compensation-related. This leaves 400.5 hours potentially eligible for compensation at the professional rate sought and 15.9 hours potentially eligible for compensation at one-half of that rate.

• Wu, 2002	68.50 hrs @ \$385 hr	26,372.50
• Freedman, 2001	6.00 hrs @ \$190 hr	1,140.00
• Freedman, 2002	45.50 hrs @ \$200 hr	9,100.00
• Freedman, 2003	5.00 hrs @ \$225 hr	1,125.00
• Finkelstein, 2001	4.00 hrs @ \$310 hr	1,240.00
• Finkelstein, 2002	11.00 hrs @ \$340 hr	3,740.00
• Finkelstein, 2003-2004	21.00 hrs @ \$365 hr	7,665.00
<u>Travel & Comp-related time (in-house attorneys)</u>		
• Florio, 2002	0.25 hrs @ \$192.50	96.25
• Florio, 2003-2004	36.75 hrs @ \$217.50 hr	7,997.12
• Finkelstein, 2002	1.25 hrs @ \$170 hr	212.50
• Finkelstein, 2003-2004	3.75 hrs @ \$182.50	684.38
Copies		1,430.29
Postage, overnight delivery		88.87
Phone, FAX, Fed-Ex		273.06
Attorney Auto & Parking		1.05
`Legal research		98.20
Working Meals (4)		218.20
<u>Professional time (outside counsel)</u>		
• O'Neill	400.5 hrs @ \$435	174,217.50
• How-Downing	332.5 hrs @ \$385	127,935.50
• Morfeld	28 hrs @ \$385	10,780.00
• Smith	1.6 hrs @ \$385	616.00
• Waggoner	3.3 hrs @ \$385	1,270.50
• Addiego	9 hrs @ \$310	2,790.00
• Gray	343.6 hrs @ \$285	98,581.50

• Tremont	7.8 hrs @ \$285	2,223.00
• Wilson	13.40 hrs @ \$225	3,015.00
• Nielsen	59.5 hrs @ \$145	8,627.50
• Pau	122.8 hrs @ \$145	17,806.00

<u>Travel & Comp-related time (outside counsel & paralegals)</u>		
• O'Neill	15.9 hrs @ \$217.50	3,458.25
• How-Downing	15.7 hrs @ \$192.50	3,022.25
• Gray	4.60 hrs @ \$142.50	655.50
• Nielsen	0.60 hrs @ \$72.50	43.50
• Pau	0.60 hrs @ \$72.50	43.50
<u>Expenses (outside counsel)</u>		
• copies		4,254.20
• Fax & phone		211.20
• Lexis-Nexis		2,196.05
• West Publishing		2,081.14
• Filing/courier fees		457.09
• Misc database/transcripts		745.80
• Travel		238.00
<u>Professional time (experts)</u>		
• Meal	479.75 hrs @ \$150 hr	71,962.50
• S. McDonald	332.50 hrs @ \$250 hr	83,125.00
• M. McDonald	11.00 hrs @ \$250 hr	2,750.00
<u>Expenses (experts)</u>		
• Meal (copies)		15.63
• McDonald Partners (travel, Fed-Ex, binder tabs)		333.53

TURN states that its efforts, at a cost to ratepayers of less than \$1 million, produced ratepayers savings estimated at about \$1 billion, a cost/benefit ratio of 1000 to 1. This is accurate, as far as it goes. A ratio, alone, cannot provide a complete picture of the value of TURN's participation, let alone the participation of any intervenor. But it is a tool that can assist us in attempting to measure the ultimate usefulness of an intervenor's participation. TURN's pleadings and prepared testimony were thorough, comprehensive, and ultimately highly persuasive. We find that TURN's efforts were productive.

TURN has documented the hours claimed by its lawyers (both in-house and outside counsel) and experts by presenting a daily breakdown of those hours and an accompanying brief description of each activity. TURN includes issue-specific allocations of the professional time spent by each attorney. The request also separately identifies all travel and compensation-related activities and provides subtotals for these cost items (with one exception discussed below).

TURN points out that the compensation it seeks for work performed prior to June 2003 does not exceed the budget estimate TURN included with its initial 2002 NOI, and that the remainder of its request falls within the budget estimate reviewed in the Assigned Commissioner's Ruling on its supplemental NOI. Nonetheless, our review of these records requires us to make several adjustments.

First, we remove the time that is not compensable through the intervenor compensation program, such as time devoted to press communications or attendance at hearings of the California Legislature (Florio 2003-2004, 8.75 hours), or time spent on largely clerical or administrative tasks, as opposed to paralegal ones (Nielsen, 10.7 hours)

Second, we remove the time attributable to work on advice letter and rate design issues after D.03-12-035 issued (Florio 2003-2004, 24.25 hours; How-Downing, 1.4; Meal, 2 hours; S. McDonald, 5.75 hours).

Third, we remove a small amount of time spent on travel that was allocated to a substantive issue category (O'Neill, 0.8). With these adjustments we find that the hours claimed are reasonable.

TURN seeks the following, previously approved hourly rates for its in-house counsel: Florio, \$350 per hour for 2001 (approved in D.02-06-070), \$385 per hour for 2002 (approved in D.02-09-040), \$435 per hour for 2003 (approved in D.04-02-017) and for 2004, no increase for this proceeding; Wu, \$350 per hour for 2001 (approved in D.02-09-040) and \$385 per hour for 2002 (approved in D.03-01-074); Freedman, \$190 per hour for 2001 (approved in D.02-10-056), \$200 per hour for 2002 (approved in D.03-04-011) and \$225 per hour for 2003 (approved in D.04-02-017); Finkelstein, \$310 per hour for 2001 (approved in D.02-06-070), \$340 per hour for 2002 (approved in D.03-01-074) and \$365 per hour for 2003 (approved in D.03-08-041). TURN does not request a multiplier to the hourly rates of any of its advocates, and especially considering the scale of the total compensation award, we agree that one would be inappropriate.

TURN utilized the services of 9 attorneys and 2 paralegals from the law firm Davis Wright Tremaine, LLP. We have not previously adopted 2003 rates for TURN's outside attorneys or paralegals. Because we defer the request for compensation with respect to substantive work in 2004, we do not adopt 2004 rates for any of these advocates, but instead rely on the 2003 rates we adopt for any time we do approve in 2004.

TURN seeks a 2003 rate of \$435 for Edward O'Neill. O'Neill was last awarded his requested rate of \$315 for 2001 in D.02-11-024. TURN argues that that rate is low considering the rates awarded to other comparably qualified attorneys and should not serve as the basis for assessing the appropriate rate for 2003. O'Neill has practiced law longer than Florio, also focusing on energy and regulatory law, and TURN argues that the same rate for 2003 for O'Neill is reasonable. We agree that TURN has justified a rate of \$435 for 2003 for O'Neill.

TURN requests a 2003 hourly rate of \$385 for Lindsey How-Downing. We have not previously set a rate for How-Downing, who is a partner at Davis Wright Tremaine with 20 years experience practicing administrative and regulatory law. How-Downing holds a 1983 J.D. As described in D.04-02-017, the 2002/2003 *Of Counsel* survey, on which we often rely, reflects data through January 1, 2002 that supports a partner hourly rate of \$400, with low-end rate of \$287 and a high-end rate of \$512. TURN compared the requested rate to the \$385 rate awarded to Dian Grueneich in D.03-10-085 for her 2003 work. Grueneich has five years more legal experience than How-Downing, and thus we would expect How-Downing's rate to be lower. However, TURN has provided market information, by its citations to the *Of Counsel* survey, that support its argument that the requested rate of \$385 falls below the average partner rate for the 2002/2003 survey but within the range for that time period. Given this information, we agree that a rate of \$385 for 2003 for How-Downing is reasonable.

TURN requests \$385/hour for 2003 work by Martin Morfeld, a tax attorney with 24 years of legal experience. Morfeld has a J.D. and a 1979 L.L.M. TURN requests \$385/hour for 2003 work by James Waggoner, a bankruptcy attorney who received his J.D. in 1974. TURN requests \$385/hour for 2003 work by Paul

Smith, a attorney with corporate, transactional, and financing emphasis. Smith received an L.L.B. in South Africa in 1976 and began practicing in California in 1982. Given the discussion about How-Downing's rate, we find the requested rates for Morfeld, Waggoner, and Smith reasonable.

TURN seeks a 2003 hourly rate of \$310 for Joseph Addiego III, a litigation partner with experience in bankruptcy court for both debtors and creditors. Addiego received his J.D. in 1993. This rate is in the lower range of partner rates demonstrated by the *Of Counsel* survey, and is reasonable.

TURN requests \$285/hour for the 2003 work by Jeffrey Gray, a senior associate with eight years of energy and regulatory legal experience. Gray was admitted to the California Bar in 1995 after receiving his J.D. Gray assumed significant responsibility in this case, handling issues about reasonableness of rates and benefits under the PSA, financial effects on PG&E of the PSA and potential delay of implementation, as well as cross-examination of PG&E's Chief Financial Officer. The 2002/2003 *Of Counsel* survey shows an average associate rate of \$253/hour, with a range of \$176 to \$330. Because of Gray's level of responsibility in this case, we agree that \$285, a rate in the higher end of the associate range, is an appropriate rate for his work in 2003.

TURN seeks a rate of \$285 for 2003 work by Treg Tremont, a senior associate with 10 years of legal experience before state and federal agencies. Tremont received his J.D. in 1993. Consistent with the discussion regarding the rate for Gray, we find that a 2003 rate of \$285 for Tremont is reasonable.

TURN requests \$225/hour for 2003 work by Elisa Wilson, an associate with seven years of energy experience focusing on energy transactional and regulatory matters. Wilson received her J.D. in 1993. Given her limited role in

this proceeding, we agree that a rate at the lower end of the associate range is reasonable and approve the \$225 rate requested.

TURN seeks \$145/hour for the work performed by paralegals Barbara Nielsen and Judy Pau in 2003. Nielsen was previously awarded a rate of \$125 for 2001, and Pau was awarded a rate of \$115 for 2000 and 2001. Nielsen has worked as a paralegal for 23 years, Pau has worked in the same capacity for 11 years. Nielsen received a J.D. in 1993. TURN includes information from the 2002/2003 *Of Counsel* survey showing a range of paralegal rates of \$96-\$197, with an average rate of \$150. We agree that given Nielsen's experience and the fact that she has a law degree, \$145 is an appropriate rate for 2003. Pau's experience does not support the same hourly rate, however. Recognizing that she does not have the same level of experience as Nielsen, a rate in the lower end of the middle third of the paralegal range is appropriate and therefore we authorize a rate of \$135 for 2003.

We have not previously adopted rates for the experts TURN relied on in this proceeding. TURN requests an hourly rate of \$150 for work performed by Margaret Meal in 2001 through 2003, her standard billing rate to all clients. Meal holds a Civil Engineering degree (1981) and an M.S. in Energy and Resources (1985). She became a Chartered Financial Analyst in 1994. Meal has focused on the electric power industry. Meal performed financial analysis for TURN in this case. In D.03-10-085 we awarded Jody London, who had 13 years of energy experience, a 2003 rate of \$160. Given Meal's additional experience, the requested rate of \$150 is reasonable in comparison to others with similar experience.

TURN requests a 2003 hourly rate of \$250 for both Sandra McDonald and Michael McDonald, their standard billing rates for all clients. Ms. McDonald prepared testimony and testified on complex financial matters, Mr. McDonald

performed research utilized in the modeling efforts undertaken by Ms. McDonald.

Ms. McDonald has been involved in utility finance issues for 15 years, as an investment banker and on behalf of public power clients. She has a Civil Engineering degree and an M.B.A. TURN provides evidence that PG&E paid its witnesses testifying on the same matters as Ms. McDonald between \$400 and \$500 per hour. We agree that an hourly rate of \$250 for 2003 work is reasonable for Ms. McDonald.

Mr. McDonald began working in the electric industry in the mid 1970's, managing public power entities at increasing levels of responsibility. TURN does not provide the same level of market data and justification for the hourly rate for Mr. McDonald as it does for Ms. McDonald, but given his level of experience, it appears that \$250/hour would be justified. Given Mr. McDonald's limited number of hours in this proceeding, we will adopt this rate, but caution TURN that it should provide fuller justification for Mr. McDonald's rate (even if it seeks the same rate again), in future compensation requests.

The itemized direct expenses submitted by TURN, its outside counsel and its experts, while large in aggregate dollars, are not unreasonable per se considering the nature and span of TURN's participation in this complex, multi-party proceeding. TURN's in-house direct expenses are meticulously recorded (e.g., for photocopies, they indicate date incurred, number of pages in original, and number of copies made). We make only one minor adjustment, to remove \$218.20 for lunches, which are unexplained and generally are not compensable through the intervenor compensation program. The direct expenses of TURN's outside counsel are well-documented and appear to represent actual charges for the kinds of items we have allowed in the past, with the exception of an

unexplained \$70 “meeting expense”, which we disallow. We do not deduct mileage to Sacramento for a meeting there with another party on matters related to this proceeding.²¹ The direct expenses of TURN’s experts all appear reasonable, with one minor exception (we estimate at \$2.00 the tip portion of an \$18 parking charge incurred by McDonald Partners and deduct this sum, since such charges are not compensable through the intervenor compensation program). Thus, with the adjustments described, we find that TURN’s direct expenses are reasonable.

We award TURN \$866,884.22 as shown in Section 6.5 below.

6. Award

As set forth in the tables below, we award a total of \$1,380,045.25 in intervenor compensation.

6.1. Aglet

Experts	Year	Rate	Hours	Total
Weil	2003	\$ 220.00	396.80	\$87,296.00
Czahar	2003	\$ 220.00	139.75	\$30,745.00
subtotal				\$118,041.00
Expert Compensation Request/Travel Time				
Weil	2003, 2004	\$ 110.00	68.10	\$7,491.00
Subtotal				\$7,491.00
Expert time				\$125,532.00
Direct Expenses				\$1,615.34
Total				\$127,147.34

6.2. CHRC

Attorneys	Year	Rate	Hours	Total
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²¹ In response to inquiries from the ALJ coordinating the intervenor program, TURN states that Florio did not bill for time spent traveling because he used the time to conduct other business by cell phone.

Roos-Collins	2001-2003	\$ 325.00	516.2	\$167,765.00
Bonham	2001	\$ 185.00	10.0	\$1,850.00
Bonham	2002	\$ 195.00	166.0	\$32,370.00
Bonham	2003	\$ 220.00	223.5	\$49,170.00
Subtotal				\$251,155.00

Attorney Compensation Request/Travel Time

Roos-Collins	2003, 2004	\$ 162.50	10.0	\$1,625.00
Bonham	2004	\$ 110.00	8.0	\$880.00
Subtotal				\$2,505.00
Attorney Time subtotal				\$253,660.00

Paralegal	Year	Rate	Hours	Total
Ridolfi	2002-2003	\$ 75.00	40.2	\$3,015.00
Paralegal Time subtotal				\$3,015.00
Attorney/Paralegal time				\$256,675.00

Experts	Year	Rate	Hours	Total
Sutton	2003	\$ 150.00	31.0	\$4,650.00
Park	2003	\$ none	1.5	\$0.00
Rothert	2002	\$ 135.00	6.0	\$810.00
Purkey	2002	\$ 200.00	96.8	\$19,360.00
Trush	2002	\$ 200.00	52.5	\$10,500.00
Subtotal				\$35,323.00
Expert Travel Time				
Trush	2002	\$ 100.00	6.0	\$600.00
Expert Time Subtotal				\$35,920.00
Direct Expenses				\$5,813.46
Total				\$298,408.46
Less Funds Received				(\$42,427.18)
Total Awarded				\$255,971.28

6.3. CU

Attorney	Year	Rate	Hours	Total
Savage	2003	\$ 320.00	88.36	\$28,275.20
Savage comp/travel	2003, 2004	\$ 160.00	30.57	\$4,891.20
Subtotal				\$33,166.40
Direct Expenses				\$229.00
Total				\$33,465.40

6.4. Greenlining

Attorneys	Year	Rate	Hours	Total
Gnaizda	2003	\$ 450.00	96.8	\$43,560.00
Berrio	2003	\$ 275.00	105.0	\$28,875.00
Subtotal				\$72,435.00

Attorney Compensation Request/Travel Time

Berrio	2003	\$ 137.50	11.4	\$1,567.50
Berrio	2004	\$ 137.50	21.5	\$2,956.25
Subtotal				\$4,523.75
Attorney Time subtotal				\$76,958.75

Paralegals	Year	Rate	Hours	Total
Abastillas	2003	\$ 90.00	7.1	\$639.00
Attorney/Paralegal time				\$77,597.75

Experts	Year	Rate	Hours	Total
Gamboa	2003	\$ 330.00	14.1	\$4,653.00
Phillips	2003	\$ 310.00	42.5	\$13,175.00
Expert time subtotal				\$17,828.00
Attorney/Paralegal/Expert Total				\$95,425.75
Direct Expenses				\$1,151.26
Total				\$96,577.01

6.5. TURN

Attorneys	Year	Rate	Hours	Total
Florio	2001	\$ 350.00	27.25	\$9,537.50
Florio	2002	\$ 385.00	33.25	\$12,801.25
Florio	2003-2004	\$ 435.00	336.00	\$146,160.00
Wu	2001	\$ 350.00	60.00	\$21,000.00
Wu	2002	\$ 385.00	68.50	\$26,372.50
Freedman	2001	\$ 190.00	6.00	\$1,140.00
Freedman	2002	\$ 200.00	45.50	\$9,100.00
Freedman	2003	\$ 225.00	5.00	\$1,125.00
Finkelstein	2001	\$ 310.00	4.00	\$1,240.00
Finkelstein	2002	\$ 340.00	11.00	\$3,740.00
Finkelstein	2003-2004	\$ 365.00	21.00	\$7,665.00
O'Neill	2003	\$ 435.00	399.70	\$173,869.50
How-Downing	2003	\$ 385.00	331.10	\$127,473.50
Morfeld	2003	\$ 385.00	28.00	\$10,780.00
Smith	2003	\$ 385.00	1.60	\$616.00
Waggoner	2003	\$ 385.00	3.30	\$1,270.50

Addiego	2003	\$ 310.00	9.00	\$2,790.00
Gray	2003	\$ 285.00	343.60	\$97,926.00
Tremont	2003	\$ 285.00	7.80	\$2,223.00
Wilson	2003	\$ 225.00	13.40	\$3,015.00
Subtotal				\$659,844.75

Attorney Compensation Request/Travel Time

Florio	2002	\$ 192.50	0.25	\$48.13
Florio	2003-2004	\$ 217.50	36.75	\$7,993.13
Finkelstein	2002	\$ 170.00	1.25	\$212.50
Finkelstein	2003-2004	\$ 182.50	3.75	\$684.38
O'Neill	2003	\$ 217.50	15.90	\$3,458.25
How-Downing	2003	\$ 192.50	17.70	\$3,407.25
Gray	2003	\$ 142.50	4.60	\$655.50
Subtotal				\$16,459.13
Attorney Time subtotal				\$676,303.88

Paralegals	Year	Rate	Hours	Total
Pau	2003	\$ 135.00	122.80	\$16,578.00
Nielsen	2003	\$ 145.00	48.80	\$7,076.00
Subtotal				\$23,654.00

Paralegal Compensation Request/Travel Time

Pau	2003	\$ 135.00	0.60	\$81.00
Nielsen	2003	\$ 145.00	0.60	\$87.00
Subtotal				\$168.00
Paralegal Time subtotal				\$23,822.00
Attorney/Paralegal time				\$700,125.88

Experts	Year	Rate	Hours	Total
Meal	2001-2003	\$ 150.00	477.75	\$71,662.50
S. McDonald	2003	\$ 250.00	326.75	\$81,687.50
M. McDonald	2003	\$ 250.00	11.00	\$2,750.00
Subtotal				\$156,100.00
Direct Expenses				\$10,658.34
Total				\$866,884.22

The awards are to be paid by PG&E, the regulated entity in this proceeding. Consistent with previous Commission decisions, we will order that

interest be paid on the respective award amounts (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after the designated intervenor filed its compensation request and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Each intervenor's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Comment Period

This is an intervenor compensation matter. As provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we could waive the otherwise applicable 30-day comment period for this decision, but because of the number and size of the awards, we have circulated it for comment for a reduced period.

8. Assignment of Proceeding

Commissioner Michael R. Peevey is the Assigned Commissioner. This proceeding initially was assigned to ALJ Burton W. Mattson and was later reassigned to ALJ Robert Barnett.

Findings of Fact

1. Aglet, CHRC, CU, Greenlining and TURN all made a substantial contribution to D.03-12-035 as described herein.
2. Aglet, CHRC, CU, Greenlining and TURN requested hourly rates for attorneys and experts that, where adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

3. The total of these reasonable fees is \$1,380,045.25.

Conclusion of Law

Aglet, CHRC, CU, Greenlining and TURN have fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and they are entitled to intervenor compensation for their claimed fees and expenses, as adjusted herein, for substantial contributions to D.03-12-035.

O R D E R**IT IS ORDERED** that:

1. As compensation for their substantial contributions to Decision 03-12-035, we award Aglet Consumer Alliance (Aglet), \$127,147.34; California Hydropower Reform Coalition (CHRC), \$255,971.28; Consumers Union of U.S., Inc. (CU), \$33,465.40; Greenlining Institute (Greenlining), \$96,577.01; and The Utility Reform Network (TURN), \$866,844.22.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E) shall pay Aglet, CHRC, CU, Greenlining and TURN each entity's award.
3. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made. Interest shall be paid beginning on April 25, 2004 for Aglet's award, beginning May 2, 2004 for the awards to CHRC, Greenlining, and TURN, and beginning May 12, 2004 for CU's award.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0312035
Proceeding(s):	I0204026
Author:	ALJ Cooke
Payer(s):	Pacific Gas and Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet Consumer Alliance	2/10/04	\$131,847.28	\$127,147.34	No	Premature; failure to make substantial contribution; failure to discount intervenor compensation preparation time
California Hydropower Reform Coalition	2/17/04	\$284,415.79	\$255,971.28	No	Failure to justify hourly rate; failure to discount travel time; arithmetic errors; administrative time not compensable; undocumented costs
Consumers Union	2/27/04	\$83,396.08	\$33,465.40	No	Failure to justify hourly rate; failure to make substantial contribution; failure to discount intervenor compensation preparation time; arithmetic errors; communicating with press not compensable
Greenlining Institute	2/17/04	\$201,290.34	\$96,577.01	No	Failure to justify multiplier; failure to justify hourly rate; premature; failure to make substantial contribution; failure to discount travel time; undocumented costs
The Utility Reform Network	2/17/04	\$890,784.85	\$866,884.22	No	Failure to justify hourly rate; administrative time not compensable; communicating with legislators not compensable; premature; failure to discount travel time;

					and undocumented costs
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Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Policy Expert	Aglet Consumer Alliance	\$220	2003	\$220
Raymond	Czahar	Finance	Aglet Consumer Alliance	\$220	2003	\$220
Richard	Roos-Collins	Attorney	California Hydropower Reform Coalition	\$325	2001-2003	\$325
Charlton	Bonham	Attorney	California Hydropower Reform Coalition	\$275	2001	\$185
Charlton	Bonham	Attorney	California Hydropower Reform Coalition	\$275	2002	\$195
Charlton	Bonham	Attorney	California Hydropower Reform Coalition	\$275	2003	\$220
Kat	Ridolfi	Paralegal	California Hydropower Reform Coalition	\$75	2002-2003	\$75
David	Sutton	Policy Expert	California Hydropower Reform Coalition	\$150	2003	\$150
Steve	Rothret	Scientist	California Hydropower Reform Coalition	\$150	2002	\$135
David	Purkey	Scientist	California Hydropower Reform Coalition	\$200	2002	\$200
Bill	Trush	Scientist	California Hydropower Reform Coalition	\$200	2002	\$200
Robin	Park	Scientist	California Hydropower Reform Coalition	\$150	2003	-0-
Michel	Florio	Attorney	The Utility Reform	\$350	2001	\$350

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
			Network			
Michel	Florio	Attorney	The Utility Reform Network	\$385	2002	\$385
Michel	Florio	Attorney	The Utility Reform Network	\$435	2003-2004	\$435
Randolph	Wu	Attorney	The Utility Reform Network	\$350	2001	\$350
Randolph	Wu	Attorney	The Utility Reform Network	\$385	2002	\$385
Matthew	Freedman	Attorney	The Utility Reform Network	\$190	2001	\$190
Matthew	Freedman	Attorney	The Utility Reform Network	\$200	2002	\$200
Matthew	Freedman	Attorney	The Utility Reform Network	\$225	2003	\$225
Robert	Finkelstein	Attorney	The Utility Reform Network	\$310	2001	\$310
Robert	Finkelstein	Attorney	The Utility Reform Network	\$340	2002	\$340
Robert	Finkelstein	Attorney	The Utility Reform Network	\$365	2003-2004	\$365
Edward	O'Neill	Attorney	The Utility Reform Network	\$435	2003	\$435
Lindsey	How-Downing	Attorney	The Utility Reform Network	\$385	2003	\$385
Martin	Morfeld	Attorney	The Utility Reform Network	\$385	2003	\$385
Paul	Smith	Attorney	The Utility Reform Network	\$385	2003	\$385
James	Waggoner	Attorney	The Utility Reform Network	\$385	2003	\$385
Joseph	Addiego III	Attorney	The Utility Reform Network	\$310	2003	\$310

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Jeffrey	Gray	Attorney	The Utility Reform Network	\$285	2003	\$285
Treg	Tremont	Attorney	The Utility Reform Network	\$285	2003	\$285
Elisa	Wilson	Attorney	The Utility Reform Network	\$225	2003	\$225
Judy	Pau	Paralegal	The Utility Reform Network	\$145	2003	\$135
Barbara	Nielsen	Paralegal	The Utility Reform Network	\$145	2003	\$145
Margaret	Meal	Finance	The Utility Reform Network	\$150	2001-2003	\$150
Sandra	McDonald	Finance	The Utility Reform Network	\$250	2003	\$250
Michael	McDonald	Other	The Utility Reform Network	\$250	2003	\$250
Mark	Savage	Attorney	Consumers Union	\$365	2003	\$320
Robert	Gnaizda	Attorney	Greenlining Institute	\$450	2003	\$450
Itzel	Berrio	Attorney	Greenlining Institute	\$290	2003	\$275
Noelle	Abastillas	Paralegal	Greenlining Institute	\$90	2003	\$90
John	Gamboa	Policy Expert	Greenlining Institute	\$350	2003	\$330
Michael	Phillips	Policy Expert	Greenlining Institute	\$360	2003	\$310